MT LEGISLATIVE HISTORY

Chapter 184 1987

Bill H _____ (S) 28 Original bill & hist. ___C

H. Committee on Local Government		S. Committee on Local Government	
Hearing Date(s) Mar 06	✓ C	Hearing Date(s) Jan 13	✓ C
Mar 11	✓ C	Jan 20	✓ C
_____	___C	_____	___C
_____	___C	_____	___C
Date Out Mar 11	✓ C	Jan 20	✓ C

Did this bill originate in an interim committee? ___Yes ___No

Committee _____ Report _____

Form CS-32
Rev. 1985

STATUS SHEET

50TH LEGISLATIVE SESSION

LOCAL GOVERNMENT COMMITTEE

SENATE BILL NUMBER	ENTERED COM. DATE	DATE CON-SIDERED	OUT OF COM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMENDED DATE	DO NOT PASS AS AMENDED DATE	BE CON-CURRED IN DATE	BE NOT CON-CURRED IN DATE	BE CON-CURRED IN AMENDED DATE	BE N CONCU IN AMEN DAT
28	2/4/87	3/6/87						3/11/87			
125	2/4/87	3/4/87						3/4/87			
135	2/11/87	3/6/87							3/11/87		
141	2/11/87	3/6/87								3/11/87	
180	2/11/87	3/4/87								3/4/87	
204	2/18/87	3/4/87						3/4/87			
206	2/18/87	3/13/87						3/13/87			
220	2/18/87	3/16/87									
255	2/18/87	3/4/87						3/4/87			
274	2/24/87	3/9/87								3/11/87	
282	2/18/87	3/13/87						3/13/87			
288	2/24/87	3/16/87									
309	2/18/87	3/9/87						3/11/87			
316	2/24/87	3/11/87	tabled 3/11/87								

Use a separate sheet for Senate Bills, House Bills, and Resolutions.

Senator Bishop in closing stated the bill will not affect the subdivision. A subdivision boundary will not be able to be changed. SID's will not be affected. The only way to affect a SID is to petition to have the boundary changed. He said he could not envision how it could be done and the assessment spread. It will stay within the SID as an entity within itself with a definite legal description and there is no way to change that through the bill. Senator Bishop commented he felt it was a good bill. It just gives people an opportunity to correct a mistake.

CONSIDERATION OF SENATE BILL 28: Senator J. D. Lynch, Senate District 34 and sponsor of the bill, stated the Senate Committee amended the bill to address the problem he spoke of. He stated the Butte Water Company is the owner and maintenance of the water system in his community. Last November a situation arose where the company dug a hole in the middle of the street in front of his home in order for a water pipe to be fixed. The company wanted a document to be signed which stated he was responsible for the hole that was dug. Senator Lynch did sign the document but the company would not let him use the companies barricades for the hole. He said the repair to the pipe in front of his home was a small repair that the water company would previously have done until it was taken over by the present owner.

Senator Lynch stated the bill states that in a middle of a public thoroughfare that the water company is responsible for fixing the main. The bill has been amended to say that the homeowner will pay for whatever equipment goes into fixing the pipes and the company will pay for the labor. Senator Lynch felt the bill was a good bill and tells the public they will be protected.

PROPONENTS: Rep. Brown, Rep. Hansen and Rep. Pistoria asked to be listed as proponents because of problems in their communities.

OPPONENTS: John Alke, Attorney in Helena appearing on behalf of Mountain Water Company, stated the bill specifies that the utility will be responsible for repairing and maintaining the customer's line. This speaks of the service line from the main into the house which is owned by the customer. The utility owns the main. Mr. Alke thought this unconstitutional particularly when considering the enormous liability that is attached. If a customer does not want to replace an old delapitated main, and it is his decision to replace it, the liability falls on the utility to cover those errors or ommissions in not replacing the main. Mr. Alke said no sane landowner is going to replace his line if he can say he is satisified with his service and it is the

companies responsiblity to maintain it. He stated this is unconstitutional and if necessary Mountain Water will be forced to litigate on that basis.

He said there is a second defect in the bill that is also unconstitutional. The bill originally applied to both municipalities and private companies. He said municipalities have a great deal of clout with the legislature and after the hearing in the Senate committee they were amended out of the bill. Now the bill essentially speaks of two companies, the Butte Water Company and Mountain Water Company in Missoula. Mr. Alke stated that the legislature is prepared to say that it is public policy of the state that a private company must maintain a private owner's service line but municipals have no such obligation. He said he maintained that as a violation of the Equal Protection Clause. There is absolutely no basis for the municipal and private water to be distinguished between. He said the bill Senator Lynch proposed would cause a great deal of damage to Mountain Water Company and respectively submitted that the bill is unconstitutional.

James Chelini, President and General Manager, Butte Water Company, stated he was present to clarify any questions the committee might have. He presented a handout to the committee (Exhibit 3).

DISCUSSION (OR QUESTIONS) ON SENATE BILL 28: Rep. Sales asked who owns the mains right now ?

Rep. Lynch replied the Butte Water Company and replied that was the same in Missoula.

Rep. Sales commented the service line from the main in to the home was the homeowners responsibility.

Rep. Lynch commented that was correct. In Bozeman the water company takes care of the line from the property line to the curbside.

Rep. Sales asked if what Senator Lynch wanted was that the homeowners still be responsible for the cost of the maintenance of the service line from the main to the property?

Senator Lynch said he was saying the property owner will pay for any equipment but that the five minute job will be done by the water company as was done for years before the new owner. He said they should not leave people stranded in the middle of a street without any barricades and he felt the only way to handle that was through the bill.

Mr. Alke stated the service line is owned from main to premises by the customer. The bill states it is the water companies' obligation to repair the service line or that portion of the service line from property line to the main. Materials and supplies will be paid by the landowner. The water companies will pay for the labor which is the greater expense of the installation and the liability will be borne by the water companies for failure to maintain. If something goes wrong with the service line and damages done, the liability will follow the persons responsible for maintaining.

Rep. Brown asked what the constitutional problem was between distinguishing municipal and private operations? He asked if they are not already by law very clear and separate entities in this field?

Mr. Alke replied the doctorine of equal protection prohibits the legislature from arbitrarily distinguishing between similarly situated entities. In this case, the fact that one water company is municipally owned and one is privately owned has no relationship with the underlying question of obligation to repair and who should fund the liability.

Rep. Brown stated a privately held company and a publicly owned operation has both in court cases of the past as well as in every way dealt with in the legislature been considered as separate entities. He asked Mr. Alke if he could provide the committee with some cases for his opinion that it was unconstitutional?

Mr. Alke replied that he could not provide the committee with a case on this specific issue because to his knowledge it is the first time anyone has tried to impose this duty on someone else.

Rep. Squire asked if the publicly owned water companies are under the control of the PSC?

Mr. Alke responded yes and no. They are controlled to the extent that they file rate increases in excess of 12 percent per year that are not EPA mandated. Service considerations may or may not be under the control of the PSC.

Senator Lynch in closing stated the question of the unconstitutionality was just a smoke screen. All he was saying in the bill was how could they build a hole in the middle of the street which is not owned by the homeowner and tell the homeowner they are responsible for it. He stated the

difference between privately and publicly owned companies is that both of them do not maintain the streets. Senator Lynch stated that Jim Johnston, Butte Business Department, a proponent on the bill, had said the problem is the water companies do not know what gets filled in and what doesn't and consequently the streets are damaged and it costs the city thousands of dollars to repair them. Senator Lynch stated Butte-Silver Bow is in favor of the bill. He commented he would follow the bill to the PSC and the Supreme Court because they would not rule that it is unconstitutional. He said it is a good bill, a citizen bill and taxpayer bill and urged a do pass.

CONSIDERATION OF SENATE BILL 141: Senator Esther Bengtson, Senate District 49 and sponsor of the bill stated SB 141 gives a management tool and flexibility to counties to allow the counties an option to levy a 55 all purpose mill. The bill establishes those levies that go into the 55 mill all purpose levy and gives the counties the opportunity to put it all into the general fund budget and use it for not only those particular things that the levies are designated for but for other things included in their budget. This can be done for one year and the next year they can eliminate the all purpose levy and go back to levying according to the caps in the bill. The counties have not raised those levies since 1973. They do not have the flexibility within their budgets as the cities do. Cities have a 65 mill all purpose levy. Senator Bengtson stated counties have been asking for this flexibility for a number of years. She felt it had been approved in the Senate because of the time. She said I105 has capped the levies and she stated in tough times they need this management discretion.

PROPONENTS: Gordon Morris, MACo, presented a handout to the committee (Exhibit 4). He stated county government resources have become increasingly scarce over the years through declining revenues. This has made it increasingly difficult to manage county operations. Current state law will not allow counties to reduce bridge levy funding and use those funds for other purposes such as jails or public safety services which are funded from the general fund. As a consequence there is little incentive to reduce those levies. The all purpose levy approach gives the ability to distribute those scarce resources, property tax dollars in this case, and use them where they are identified as essential services. This bill is not a property tax increase bill. Mr. Morris stated that by giving the 55 mill authority does not mean the county commissioners will go out and levy 55 mills for all purposes. Counties are currently levying between 35 and 45 levies on the average across the state.

DAILY ROLL CALL

LOCAL GOVERNMENT COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date 3-6-87

NAME	PRESENT	ABSENT	EXCUSED
REP. NORM WALLIN, CHAIRMAN	✓		
REP. RAY BRANDEWIE, VICE CHAIRMAN	✓		
REP. BUDD GOULD	✓		
REP. REP. TIMOTHY WHALEN	✓		
REP. PAULA DARKO		✓	
REP. TOM BULGER		✓	
REP. JAN BROWN			✓
REP. BOB GILBERT			✓
REP. LARRY GRINDE	✓		
REP. WALTER SALES	✓		
REP. STELLA JEAN HANSEN	✓		
REP. PAUL PISTORIA	✓		
REP. ROBERT HOFFMAN	✓		
REP. LES KITSELMAN	✓		
REP. JACK RAMIREZ	✓		
REP. DAVE BROWN	✓		
REP. CAROLYN SQUIRES	✓		

124 WEST GRANITE STREET · P.O. DRAWER 398
BUTTE, MONTANA 59703-0398

SB 40

February 12, 1987

State of Montana
House of Representatives
Helena, Montana 59601

RE: Senate Bill 28

Gentlemen:

This bill was introduced based on an experience between Senator Lynch and Butte Water Company. I would like to give you the background on this bill.

On May 31, 1986, a motorcycle hit a mound of dirt at a water line excavation. The driver and passenger were seriously hurt causing permanent disability. The past practice at Butte Water Company was to dig the water line up and allow the resident to repair or have repaired. In this case, the home owner viewed the leak in his service line at 11:30 A.M. and was told it was his responsibility. The accident happened at 2:00 A.M. the next morning. To our knowledge, we are the only water company providing this service, and the Public Service Commission does not require we do so.

Our insurance company demanded a change, but even if they did not, the practice is not functional or safe. We changed our policy to provide for the consumers to sign for the responsibility and liability for the excavation. Senator Lynch was handled under this policy. Mr. Lynch signed the release, but wanted some of Butte Water Company barricades and cones left at job site. We had previous instructions from our insurance company to remove all barricades, signs, and material from the premises. (Letter dated June 30, 1986).

Since this incident with Mr. Lynch, our insurance company and our legal advisor determined we can not release an excavation to the resident. The home owner policy, if they have one, is not adequate to protect Butte Water Company.

Our policy, at this time, is to determine by sound where the leak is, and Butte Water Company will repair their water mains, and the water users will repair their water service lines.

The additional cost for Butte Water Company to assume the maintenance of the service lines to a surface point which has no relation to the water pipe is very expensive to all rate payers and non-functional. Excessive costs, confusion and discrimination would be the result. At present it requires all of our resources to thaw Butte Water Company's frozen pipes during extreme cold. A hard freeze would create a confusing disaster for Butte Water Company, the water user's, and our insurance company.

Butte Water Company agrees with Mr. Alke's position that SB28 is unconstitutional as it discriminates against private business.

Butte Water Company recommends a do not pass on SB28.

Thank you.

J. W. Chelini
President & General Manager

BUTTE WATER COMPANY

JWC/df

Rep. Sales moved as a substitute motion that SB 367 BE NOT CONCURRED IN. He said he could not see why the legislature should write things into law that tells the local governments how to zone in a particular area. He said the system they are using works very well. If the local governments only want to allow certain types of uses then they hold public hearings where the people of the community are heard. A determination is made at the local level. Rep. Sales said that is exactly where it belongs.

The question was called and the motion failed.

The committee reverted back to Rep. Kitselman's motion that SB 367 BE CONCURRED IN. The question was called and the motion carried with Rep. Sales and Rep. Gilbert voting no.

DISPOSITION OF SENATE BILL 368: Rep. Kitselman moved that SB 368 BE CONCURRED IN. The question was called and the motion carried with Rep. Brown and Rep. Squires voting no.

DISPOSITION OF SENATE BILL 28: Rep. Brown moved that SB 28 BE CONCURRED IN.

Rep. Sales stated with a charter form of government, Butte-Silver Bow could have passed a regulation to take care of the problem. He said the city should be responsible for what happens in the street. Rep. Sales felt it ridiculous for the legislature to take an agreement between a city and a private service and change the rules. He said this is not a legislative problem but a problem because of having a private water system. He said the bill is a terrible piece of legislation and hoped the committee voted against it.

Rep. Brandewie moved to AMEND SB 28, page 1, line 22, after "for", insert "labor costs".

He said the property owner would then pay for the labor costs, pipe and other supplies.

Rep. Pistoria stated he was for the bill 100 percent because he knows what they are going through. He asked if Senator Lynch mentioned labor too.

Rep. Brandewie stated Senator Lynch did not want to pay for the labor cost. Rep. Brandewie stated it is the homeowners responsibility to pay for the labor from the main to the house and if they are going to have the company doing it they ought to pay for the labor. He stated if the bill passed, the company should not be forced to pay the labor costs on the customers' line.

The question was called on the Amendment. A roll call vote was taken on the motion to AMEND SB 28. The motion failed 5 to 9.

The question was called on Rep. Brown's motion that SB 28 BE CONCURRED IN. A roll call vote was taken and the motion carried 9 to 7.

DISPOSITION OF SENATE BILL 135: Rep. Brandewie moved that SB 135 BE NOT CONCURRED IN.

Rep. Brandewie stated the bill was simply not needed for a lot of reasons. He read from a letter from Lake County Wester Surveying to the committee. He said the bill talked about adding land to an existing subdivision that has already been approved not of the complicated process of creating a subdivision. He stated the bill would not create much of a problem this year but as time goes by it will be more and more difficult to keep track of what is happening to this land. Rep. Brandewie stated there were conditions put on that subdivision at the beginning and if there will be changes with that subdivision then it should be looked at again. Rep. Brandewie stated his main concern in addition to that was Senator Bishop indicated there would be no problem for realtors or anyone else dealing with land. He stated no one is left out in a lawsuit when there is confusion over a piece of property. He stated the bill would introduce confusion into the recordkeeping. He stated in order to avoid paying a small amount of money in filing an amended plat, the public will be saddled with recordkeeping that over a period of time would become onerous and expensive.

Rep. Pistoria felt the bill was a good bill because of not only what he has been involved in but others he knew.

The question was called on the motion that SB 135 BE NOT CONCURRED IN. The motion carried with Reps. Gould, Kitselman, Pistoria, Ramirez and Whalen voting no.

DISPOSITION OF SENATE BILL 141: Rep. Dave Brown moved that SB 141 BE CONCURRED IN.

Rep. Kitselman stated what disturbed him was that MACo presented a need for a management tool. He said he still would go back to I27. He said the way this works the 55 mills are earmarked for specific uses. He said I27 was almost a mandate by the people; I105 is. He stated the people have had enough taxes and although there is some merit with the flexibility, by passing the bill there would be a 10 mill increase to the county taxpayers.

Date _____

NAME	PRESENT	ABSENT	EXCUSED
REP. NORM WALLIN, CHAIRMAN			
REP. RAY BRANDEWIE, VICE CHAIRMAN			
REP. BUDD GOULD			
REP. REP. TIMOTHY WHALEN			
REP. PAULA DARKO			
REP. TOM BULGER		✓	
REP. JAN BROWN			
REP. BOB GILBERT			
REP. LARRY GRINDE			
REP. WALTER SALES			
REP. STELLA JEAN HANSEN			
REP. PAUL PISTORIA			
REP. ROBERT HOFFMAN			
REP. LES KITSELMAN			
REP. JACK RAMIREZ			
REP. DAVE BROWN			
REP. CAROLYN SQUIRES			

STANDING COMMITTEE REPORT

March 11 19 87

Mr. Speaker: We, the committee on LOCAL GOVERNMENT

report SB 28

☐ do pass
☐ do not pass

XX ☐ be concurred in
☐ be not concurred in

☐ as amended
☐ statement of intent attached

Rep. Norm Wallin Chairman

ROLL CALL VOTE

LOCAL GOVERNMENT COMMITTEE

DATE 3-11-87 BILL NO. SB 28 NUMBER 1

NAME	AYE	NAY
REP. NORM WALLIN, CHAIRMAN		X
REP. RAY BRANDEWIE, VICE CHAIRMAN	X	
REP. DAVE BROWN		X
REP. JAN BROWN		X
REP. TOM BULGER Absent		
REP. PAULA DARKO		X
REP. BOB GILBERT		X
REP. BUDD GOULD		
REP. LARRY GRINDE	X	
REP. STELLA JEAN HANSEN		X
REP. ROBERT HOFFMAN	X	
REP. LES KITSELMAN	X	
REP. PAUL PISTORIA		X
REP. JACK RAMIREZ		
REP. WALTER SALES	X	
REP. CAROLYN SQUIRES		X
REP. TIMOTHY WHALEN		X
TALLY	5	9

Vonnie Evans
Secretary

Rep. Norm Wallin
Chairman

MOTION: Rep. Brandewie moved to AMEND SB 28 page 1, line 22.

The motion failed.

Form CS-31

DATE 3-11-87 BILL NO. SB 28 NUMBER 2

NAME		AYE	NAY
REP. NORM WALLIN, CHAIRMAN		X	
REP. RAY BRANDEWIE, VICE CHAIRMAN			X
REP. DAVE BROWN		X	
REP. JAN BROWN		X	
REP. TOM BULGER	Absent		
REP. PAULA DARKO		X	
REP. BOB GILBERT			X
REP. BUDD GOULD	Proxy	X	
REP. LARRY GRINDE			X
REP. STELLA JEAN HANSEN		X	
REP. ROBERT HOFFMAN			X
REP. LES KITSELMAN			X
REP. PAUL PISTORIA		X	
REP. JACK RAMIREZ	Proxy		X
REP. WALTER SALES			X
REP. CAROLYN SQUIRES		X	
REP. TIMOTHY WHALEN		X	
TALLY		9	7

Vonnie Evans
Secretary

Rep. Norm Wallin
Chairman

MOTION: Rep. Dave Brown moved that SB 28 BE CONCURRED IN.

The motion carried.

Form CS-31
Rev. 1985

STATUS SHEET

LOCAL GOVERNMENT COMMITTEE

50th Legislature

Bill No.	Subject matter	Date In	Sponsor	Hearing Date	Committee Action	Date Ou
SB 28	Liability for water pipe repair	Jan. 5	Sen. Lynch	Jan. 13	Do Pass as Amended	Jan. 20
SB 35	Permits renewal of employment contract under nepotism laws	Jan. 5	Smith	Jan. 8	Do Pass	Jan. 8
SB 55	Resort tax, resort area	Jan. 7	Story	Jan. 13	Do Pass as Amend.	Jan. 2
SB 63	Clarify procedure for assessing personal property	Jan. 6	Gage	Jan. 13	Do Not Pass	Jan. 15
SB 91	Hard-rock mining impact	Jan. 13	Hammond	postponed	TABLED Feb. 17 Reconsidered Feb. 23 DO PASS AS AMENDED	Feb. 23
SB 93	Police retirement	Jan. 13	Walker	transferred to another committee	------	-----

MINUTES OF THE MEETING
LOCAL GOVERNMENT COMMITTEE
MONTANA STATE SENATE

January 13, 1987

The second meeting of the Local Government Committee was called to order at 1:00 p.m. on January 13, 1987 by Vice Chairman R.J. Pinsoneault in Room 405 of the Capitol.

ROLL CALL: All members were present with Chairman Crippen excused for a portion of the meeting.

CONSIDERATION OF SENATE BILL NO. 28: Sen. J.D. Lynch, District #34, representing Butte-Anaconda explained the mechanics and purpose of the bill and his personal experience with the Butte Water Company which prompted the introduction of the bill. Senate Bill 28 clarifies the property owner's financial responsibility and liability for construction and maintenance of public or privately supplied water service pipelines. He said that the water companies should be more concerned about the customer. This bill says that no citizen shall be responsible for a leak in the middle of the street - it shall be the responsibility of the water company. Anything located on the citizen's property is his responsibility. He said that some cities are already doing what the bill is asking, such as Bozeman, and their rates are lower than the rates in Butte. He told the Committee that this subject was going to be taken care of by the Public Service Commission but they didn't have the power to do so and said the problem is a legitimate one and should be taken care of.

PROPONENTS:

Jim Johnson, Director of Public Works, Butte-Silver Bow, appeared in support of Sen. Lynch's bill. He said they presently have a multi-million dollar suit pending against them so they do have a liability problem with this. He said there has to be some constraints put on the water companies and this would be a benefit to Butte-Silver Bow.

Rep. Dan Harrington, District #68 stood in agreement with Sen. Lynch and said the problem had been brought to his attention in his district a number of times. He asked for favorable consideration by the Committee.

Rep. William Menahan, District #67, was also in support of SB 28 and told the Committee that Anaconda has the same water company as Butte and would not like to see the same problems come up in Anaconda.

Rep. Joe Quilici, District #71, supported the legislation. He said there have been problems for quite awhile. He thought this was a problem that could be resolved administratively and at the local level but if this is not done it should be taken care of by this bill.

OPPONENTS:

Alec Hansen, Montana League of Cities and Towns represented the municipal water utilities and testified that a solution for Butte's problems should not apply to all the state.

Bob Duty, Director of Public Works, Great Falls, passed out Exhibit #1, attached to the minutes, and briefly explained the same. He pointed out the additional cost to the city of Great Falls contained in the Appendix and also explained the diagram on the last page of the exhibit.

Alan Tandy, City Administrator of Billings, said their policy of ownership is similar to Butte but nothing like the Butte situation has occurred in Billings. This is usually assumed by SID but this bill would pass the cost of maintenance of the lines to the general rate payers.

Richard A. Nisbet, City of Helena, was opposed to the bill. He said they have 8500 services and 25% of those would be in the category of having to be replaced in the next few years. The cost to replace 25% of those lines would be approximately $3 million over a period of time. He asked that the law be left as is as this bill would not eliminate the conflicts. He also stated that the city could not take over the responsibility of thawing frozen pipes in the winter and this should be done by private contractors who have the equipment and the know-how. He told the Committee that street opening permits are required in Helena, whether it is done by the city or private individuals.

Mr. Nisbet said he had talked to the Director of Public Works in Missoula and they wanted to be shown in the record as being opposed to SB 28. They said the cost to them would be an 8% increase in rates.

John Alke, representing the Mountain Water Company of Missoula, opposed the bill and also said it was probably unconstitutional. The bill says the water company must repair and maintain the service lines. The lines could be owned by one party and this bill is mandating another party to maintain them. He asked for a Do Not Pass on the bill.

Mike Patterson, Butte Water Company, opposed the legislation. He said they do have a lot of leaks each year because about 60% of the lines are galvanized and are old. The rate payers would be the most affected by the bill.

Bruce Restad, Legislative Committee on the Montana Rural Water Systems and General Manager of the Billings Heights Water District, appeared in opposition and submitted Exhibit #2 which is attached to the minutes.

Sen. Lynch closed saying that he did not agree with the statements made by the opposition. He asked that the problem be looked at and expressed hope that a compromise could be reached.

DISCUSSION ON SENATE BILL NO. 28: Sen. Beck asked Mr. Patterson if it was a common practice to leave a hole in the middle of the street. Mr. Patterson replied that he was from the "old" regime in Butte and they tried to ascertain who was responsible for the line. Sen. Beck asked if the hole was just covered up without fixing the leak if it was found to be the responsibility of the property owner. Mr. Patterson said the hole was dug to turn the valve so the leak would not continue.

Sen. Eck asked Alec Hansen if this isn't being done in most of the cities now. He replied that in most of the cities the service line from the main to the house is the property owner's responsibility.

Mr. Nisbet stated that in Helena when there is a leak in the service line, they try to work with the customer and see if they will repair it. If the customer doesn't repair it the city will dig it up and shut off service at the main. If it is the responsibility of the customer, they would be billed for the service. If it is the responsibility of the city the cost would be borne by the city. If the owner opts to have it dug up and it is not his responsibility, the city will take care of the charges.

Sen. Walker asked Mr. Duty if they put a hole in the pavement if they are required to replace that pavement. Sen. Walker asked Mr. Duty if there were any statistics as to why these leaks occur. Mr. Duty said there are a number of reasons such as old corroded mains, heavy traffic, shallow pipes, frozen pipes, etc.

Sen. Harding asked if there would be a conflict with the statutes concerning SIDs if this law was passed.

The hearing was closed on SB 28.

At this time, Chairman Crippen appeared and assumed the Chair.

CONSIDERATION OF SENATE BILL NO. 55: Sen. Pete Story, District #41, explained that the bill simply changes the definition of a resort community. The attached proposed amendments submitted by Sen. Story pertain to unincorporated communities and in the bill on page 2, lines 4 and 5 the population requirement has been deleted. The bill permits unincorporated communities to establish a resort district, such as Gardiner and Cooke City, which permits them to raise the needed funds for the community. He stated that this is not a back door approach to a sales tax and should not be

Local Govt COMMITTEE

50th LEGISLATIVE SESSION -- 1987 Date 1-12-87

NAME	PRESENT	ABSENT	EXCUSED
BRUCE CRIPPEN	✓		
R. J. PINSONEAULT	✓		
TOM BECK	✓		
DOROTHY ECK	✓		
H. "SWEDE" HAMMOND	✓		
ETHEL HARDING	✓		
LES HIRSCH	✓		
PETER STORY	✓		
ELEANOR VAUGHN	✓		
MIKE WALKER	✓		

Each day attach to minutes.

COMMITTEE ON Local Govt.

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One: Support	Check One: Oppose
Charles Manzer	City of Great Falls	SB 23		✓
Don Elliott	PSC	SB 28		
Ron Woods	PSC	SB 28		
Bob Durkee	MTA	SB 55		✓
JOHN T. FORKAN, JR.	MONT. ASS. OF RUMBERS	S.B. 28		✓
MICHAEL J. MIZENKO	MONT STATE. ASS of Plumbers	SB 28		✓
Phil Strope	MICA	SB 55		✓
Gerald W. Smith	Yakota County Water District / Montana Rural Water Systems	SB 28		✓
Lloyd Hockett Jr.	Mont. Contractors Assoc	—	—	—
Bruce Rostad	County Water District of Bigs Heights / Montana Rural Water	SB 28		✓
Michael Sweet	BIG SKY RESORT PSC.	SB 55	✓	
Joel Shouse	Big Sky owners Assoc.	SB 55	✓	
Janet Ellis	City of Helena	SB 28		✓
Richard H. Dietz	" " "	SB 28		✓
Gordon Morris	MACo	SB 55 / SB 63	✓	
Howard Schwartz	Missoula County	SB 55	✓	
Don Hughes	Mt Chamber of Commerce			
John C. Bloomquist	Missoula County	—	—	—
Steve Waterman	MEA	SB 55		✓
Jane Hamsten	MEA	SB 63		✓
Kim [illegible]	LWV-MT	SB 55		
Michael Pichette	Butte-Silver Bow Co.	SB 28		✓
Robert A Chandler	DOC	SB 55	—	—
Alan Landy	City of Billings	SB 28		✓
Kay Foster	Billings Chamber	SB 28		✓
" "	" "	SB 55	✓	

(Please leave prepared statement with Secretary)

DATE 1-13-87

COMMITTEE ON Local Government

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
Jack Gunlan	Dist 71	SB 28	✓	
Tim Johnston	Butte/Silver Bow	SB 28	✓	
John Alke	Mountain Water	SB 78		✓
Jim Wysocki	City of BZN	SB 55	X	
Greg Jackson	Clk Recorders' Assn	SB 57	✓	
Alec Hansen	League of Cities	SB 55	✓	
" "	" " "	SB 28		✓
" "	" " "	SB 62		✓
Brooks Morin	City of Helena	SB 28		✓

NAME: Bruce Restad DATE: 1-13-87

ADDRESS: 618 Radford Sq Billings Mont 59105

PHONE: 252-0539

REPRESENTING WHOM? Montana Rural Water / County Water District of Bgs Heights

APPEARING ON WHICH PROPOSAL: SB 28

DO YOU: SUPPORT? _____ AMEND? _____ OPPOSE? ✓

COMMENT:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

(This sheet to be used by those testifying on a bill.)

NAME: Robert Doty DATE: 1-13-87

ADDRESS: P.O Box 5021 Gt. Falls MT. 59

PHONE: 727-5881

REPRESENTING WHOM? City of Great Falls

APPEARING ON WHICH PROPOSAL: SB 28

DO YOU: SUPPORT? _____ AMEND? _____ OPPOSE? X

COMMENT:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

(This sheet to be used by those testifying on a bill.)

NAME: John Alke DATE: 1/13/87

ADDRESS: 406 Fuller Ave

PHONE: 449-3690

REPRESENTING WHOM? Mon. Co. Water

APPEARING ON WHICH PROPOSAL: SB 78

DO YOU: SUPPORT? _____ AMEND? _____ OPPOSE? ✓

COMMENT:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

City of GREAT FALLS Montana 59403-5021

P. O. BOX 5021 TELEPHONE 406 / 727-5881

January 13, 1987

SENATE LOCAL GOVERNMENT
EXHIBIT NO. 1
DATE 1-13-87
BILL NO. SB 28

Local Government Committee
Montana Senate
Capitol Building
Helena, MT 59601

RE: Senate Bill 28, Water Service Responsibility:

Senators:

I strongly urge your opposition to the above referenced bill. As shown on the attachments, the fiscal and legal impacts of this bill are staggering to water utilities throughout the state. No major utility is financially capable of taking on the burden of water service line installation and repair. In these hard economic times it will prove extremely difficult to assess water rate increases which will be absolutely necessary if this bill were to pass.

Please consider the contents of the attached report very carefully, and reject Senate Bill 28. On behalf of the City of Great Falls, I am

Sincerely,

Robert Duty
Public Works Director
CITY OF GREAT FALLS

SENATE LOCAL GOVERNMENT
EXHIBIT NO. 1
DATE 1-13-87
BILL NO. SB 28

SENATE LOCAL GOVERNMENT
EXHIBIT NO. 1, p. 2
DATE 1-13-87
BILL NO. SB 28

SENATE BILL 28

TESTIMONY

Submitted to: LOCAL GOVERNMENT COMMITTEE

Submitted by: Robert E. Duty
Public Works Director
City of Great Falls

January 13, 1987

1-13-87
SB 28

I. BACKGROUND

The City of Great Falls water utility is the second largest municipal utility in the state of Montana. We currently operate, maintain, and rehabilitate 1,400,000 lineal feet of water distribution main; 15,700,000 gallons of finished water storage; and produce up to 50,000,000 gallons of water daily during peak demand periods to 20,800 water service connections.

Our current Five Year Capital Improvements Program calls for replacement of 54,000 lineal feet of badly deteriorated water main, plus galvanized bolt and tapping saddle replacement, and water treatment plant rehabilitation requiring a total of 12.7 million dollars in construction funds. We spend $160,000 per year on remedial main break repairs due to corrosion of our 100 year old cast iron pipe system. This money is spent on placement of repair clamps which are essentially bandaids and provide no benefit to the utility. There are approximately 20,000 galvanized bolts and 4000 galvanized tapping saddles requiring replacement.

In 1982 the City of Great Falls requested a 10 million dollar rate increase to rectify the above referenced problems and was authorized 6.9 million dollars from the State Public Service Commission. We are currently underfunded by 5.8 million dollars, have too many problems and not enough capital to solve them at this point.

Senate Bill 28, if passed will place 760,000 lineal feet of water service line under our jurisdiction. We already have 1,400,000 feet of main that we cannot afford to maintain, much less an additional 760,000 feet of service line. As shown later, this bill will place a minimum of 3.25 million dollars of responsibility on our utility. We simply cannot undertake such liability within our current rate structure, and will be forced to secure a 14% to 18% rate increase over and above rate increases needed to fill current operations and maintenance needs.

II. INFORMATION

We request committee rejection of this bill for the following reasons:

1. We are financially unprepared to accept the responsibility. As mentioned previously, we are currently underfunded by 5.8 million dollars and will need an additonal 3.25 million dollars (minimum) to administer the provisions of this bill. We are not set up administratively, nor do we have the manpower or equipment to perform the work in-house.

2. The bill is grossly unfair to those who have already personally paid $700 to $2,000 to replace their own service. These people must share the cost of future work for others, yet received no help from others for past work.

3. The bill is unclear as to whether the asset value of all water services will become a part of the utility rate base, and a fixed asset for the utility.

SENATE LOCAL GOVERNMENT
EXHIBIT NO. 1, 0, 3
DATE 1-13-87
BILL NO. SB 28

E-11 p. 4
1-13-87
SB 28

4. The bill adds extensive administrative costs to utilities by requiring individual water service applications to be submitted to the Public Service Commission. We see no reason for this whatsoever as the Public Service Commission is updated now via utility annual reports.

5. Payment responsibilities for new service responsibilities are ambiguous. As written, consumers will bear the cost for services through which water is not "immediately desired". This will result in a problem between utilities and developers as to when services stubbed to lots will be used. At worst, utilities will be forced to "font-end" water service costs for new subdivisions. The fiscal impact statement following does not address this potentially costly yet totally unknown quantity. The current system of making developers pay their own way is very simple and clean, and keeps public contribution away from private speculative projects. The bill as written invites controversy in this regard.

6. Replacement costs are staggering. As shown in the appendix, the Great Falls has approximately 3400 galvanzied services requiring replacement in the near future. Replacement costs vary with the extent of surface improvement restoration (driveways, fences, landscaping, swimming pools, etc.). A minimal "no problem" replacement costs + $1,000 , which will result in 3.25 million dollars in liability to our utility.

7. Many costs associated with service line repairs are out of the utilities control. We cannot regulate driveway, landscaping, or fence placement. I cite an example of a homeowner who built a swimming pool to his "back easement line". We had to replace a water main 10 feet away in the center of a 30 year old 20 foot wide easement at tremendous expense. This bill will complicate this issue and make matters worse.

8. Thawing of frozen water services will be a major liability problem and potentially very costly. Service lines are thawed by use of an arc-welder attached to a hose spigot and the closest available curb valve or hydrant. Private contractors are technically knowledgeable in checking out a home's interior electrical layout in order to determine how to perform the thawing. We are not. Private contractors have set their thawing rate structure to provide liability insurance for potential electrical system damage and resultant fires.

9. This bill takes work away from at least three small contractors in the Great Falls area. These people are qualified to do the work, and are in business to do so. They generate tax monies for the operation of state and local government and have the right to make a living also.

SENATE LOCAL GOVERNMENT
1
1-13-87

1-13-87
SB 28

10. The bill introduces numerous logistical problems including:

a. Separation of common services. There are several hundred of these in Great Falls. Will we be responsible for separating these services?

b. The bill as drafted refers to responsibility to the property line. Responsibility for leaks is impossible to ascertain because the controlling valve or "curb stop" is often located at the back of curb which is ± 20 feet from the property line. Almost every repair will result in negotiation and adjudication. The utility will probably have to dig every leak on every line to prove who is responsible.

SENATE LOCAL GOVERNMENT
EXHIBIT NO. 1
DATE 1-13-87
BILL NO. SB 28

APPENDIX

SENATE LOCAL GOVERNME
EXHIBIT NO. 1, 0, 5
DATE 1-13-87
BILL NO. SB 28

1-13-87
SB 28

FINANCIAL ANALYSIS

The utility will be required to purchase materials and equipment and hire manpower to perform the work. The following is a "nutshell" rate analysis of probable cost impacts of S.B. 28 on the Great Falls water utility:

A. EQUIPMENT COSTS:

2 small backhoes @ $35,000	$70,000
2 1-ton dumps @ $23,000	46,000
2 compressors, hammers, etc. @ 12,000	24,000
TOTAL	$140,000

note: the above is an initial capital cost. The equipment has a 10 year economic life. A sinking fund of $9,300 per year must be provided for equipment replacement at 10 years.

B. EQUIPMENT COSTS (2 each 3 man crews)

2 operators @ $27,000/year	$54,000
2 laborers @ $25,000/year	50,000
2 drivers @ $26,000/year	52,000
1 foreman @ $30,000/year	30,000
TOTAL	$186,000

C. PLUMBING MATERIALS

440 services/year @ $150/each $ 66,000

D. SURFACE RESTORATION (Curb, 50 s.f. sidewalk and 200 s.f. sod each) -- $369/Service

$369 x 440 services/year = $162,360/year

note: the above does not include driveways, trees, fences, elaborate landscaping, or large obstructions.

E. TOTAL ANNUAL COSTS (A through D) plus 5% administrative costs for clerical and management assistance totals $445,515/year plus initial equipment purchase of $140,000

F. BOND ISSUE REQUIREMENTS TO PROVIDE $445,515 PER YEAR FOR A 10 YEAR PERIOD; @ 8% INTEREST: $3,250,000

G. EFFECT ON RATES:

Current Annual Revenue	$3.2 million
Bond Issue Amortizations Requirements	$516,000/year
Rate Increase Requires	16.1% average

NOTE: This does not include inflation, unusual surface restoration, or costs for new service installation.

SENATE LOCAL GOVERNMENT
EXHIBIT NO. 1, p.2
DATE 1-13-87
BILL NO. SB 28

SENATE LOCAL GOVERNMENT

Date 1-13-87

BILL NO SB 28

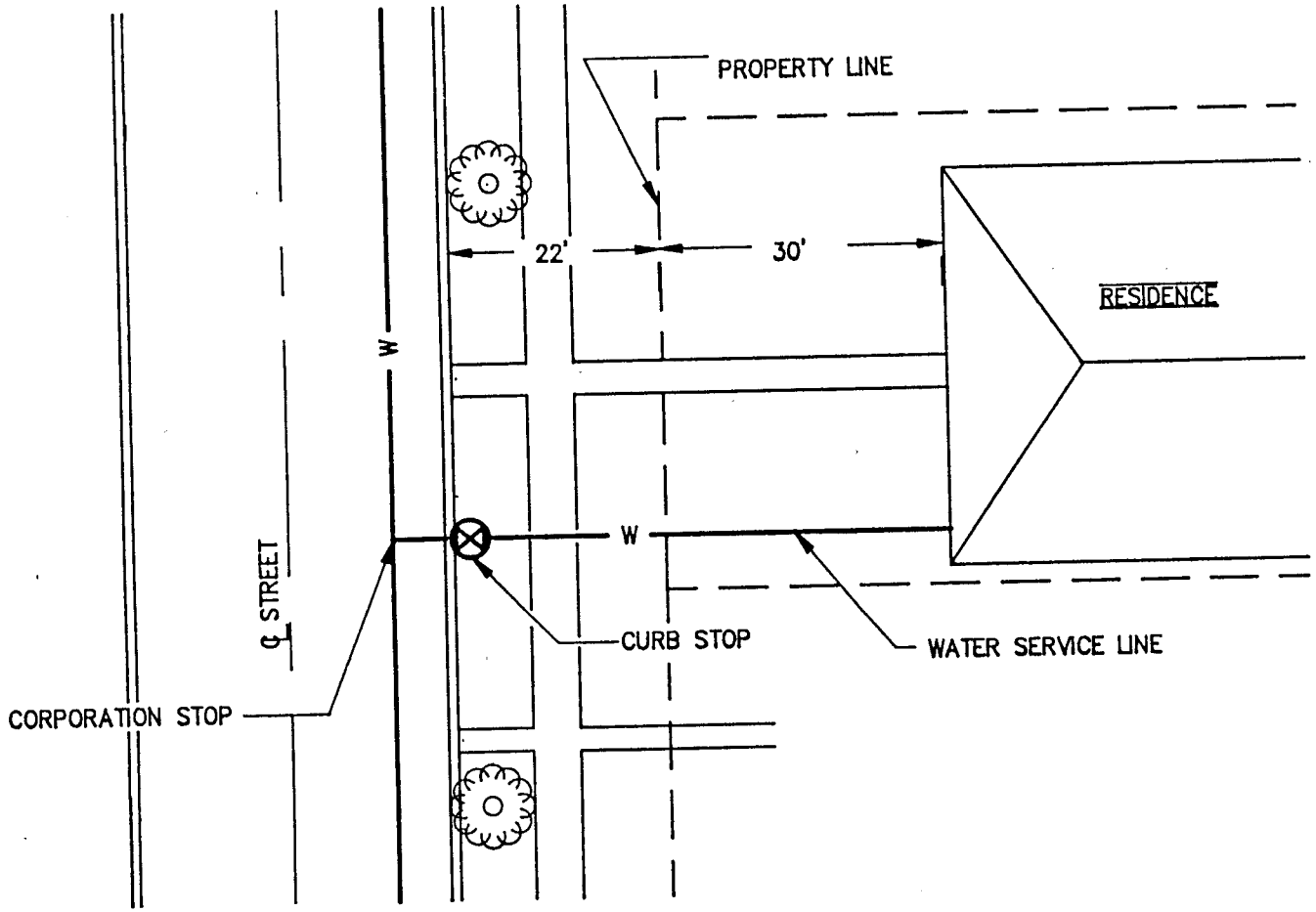

EXHIBIT NO. 2
DATE 1-13-87
BILL NO. SB28

DIRECTORS:
OSCAR M. HARMON, Pres.
JIM HURRY
DEL JONES
ROBERT LINDSEY
REX MARQUARDT
VIC REICHENBACH
DOROTHY TIMMERMAN

COUNTY WATER DISTRICT OF BILLINGS HEIGHTS

BRUCE RESTAD
GENERAL MANAGER
JUDY WEIS
SECRETARY

TELEPHONE 252-0539

618 RADFORD SQUARE, BILLINGS, MONTANA 59105

January 13,1987

Testimony and Opposition on Senate Bill #28

My name is Bruce Restad. I am a member of the Montana Rural Water Systems Legislative Committee and the General manager of the County Water District of Billings Heights. We are opposed to Senate Bill #28 for the following reasons:

1. The passage of this bill would require the Heights Water District to spread the cost of a water service, ranging from a 3/4" through an 8" size, to all of the customers served by the Water District.
2. Our Bond Ordinance requires our Water District to impose a charge for water services. The impact of this bill, pertaining to our Water District, is not known at this time, due to the limited time we have had to prepare for this hearing.
3. Our present policy is that our Water District imposes a charge for a water service installation. Our crews install the service from the water main to one foot outside of the property line. From that point on, refering to the curb stop on in to the building, the customer had the responsiblity of installing and maintaining the water service line.
4. Our charge for installing a typical 3/4" water service is $515.00 base price. On the average water service installation, $345.00 is the actual cost of installation and $170.00 is applied to our Capital Improvement Fund. This fund is used for existing system improvements.

SENATE LOCAL GOVERNMENT
Exhibit# 2
DATE 1-13-87
BILL NO. SB 28

Some areas, such as Seely Lake, are spread out and the 10-square mile stipulation will enable them to use the tax. He did not want Cooke City and Gardner to be in the same resort area and have the funds collected spent in Gardner, he said. His purpose was that the funds collected were for local use. Gardner and Cooke City are 60 miles from the county seat and are not able to get street and road improvements that are badly needed. He also did not want county commissioners to declare the entire county a resort area.

Chairman Crippen asked if the law would allow a bond to be floated for improvements and Sen. Story said that West Yellowstone was doing just that.

When asked why non-tourist towns would not invoke the tax, Sen. Story said they would not because of fear of competition from retailers in nearby communities who didn't have the tax.

Sen. Eck asked if the funds could be used for a water project and was told yes by Sen. Story. He said that there is 15 miles of road between Cooke City and Yellowstone Park which the state ignores and the federal government is not obligated to maintain because it's out of the Park. Funds there would maintain that road.

Sen. Eck felt the context would be stronger if a resort district governing body were written into the bill. Sen. Story agreed, but felt the Association of Counties would object. Sen. Beck felt the county commissioners would have to handle these funds.

Sen. Vaughn asked about the tax reduction that was supposed to result from the resort tax being invoked in an area. Sen. Story said there would be no reduction the first year but that a 5% reduction would occur the second year. Sen. Harding felt that the establishing of a district required establishing a governing board.

Karen Renne, the staff researcher, said she would refine the amendments and propose them at the next meeting.

DISPOSITION OF SENATE BILL 28: Karen distributed amendments requested by Senator Lynch. The amendments take "publicly-owned" water service companies or municipalities out of the bill entirely, she said, as well as "construction."

Senator Walker moved that the amendments DO PASS. After further discussion on refining the amendments, he recinded his motion.

Sen. Walker made a new motion on the amendments being corrected by Karen to DO PASS. The motion carried unanimously.

Sen. Walker then moved that Senate Bill 28 DO PASS AS AMENDED. The motion carried unanimously.

ADJOURNMENT: The meeting adjourned at 1:55 p.m.

SEN. BRUCE D. CRIPPEN,
Chairman

SENATE LOCAL GOVERNMENT COMMITTEE

50th LEGISLATIVE SESSION -- 1987 Date 1-20-87

NAME	PRESENT	ABSENT	EXCUSED
BRUCE CRIPPEN	X		
R. J. PINSONEAULT	X		
TOM BECK	X		
DOROTHY ECK	X		
H. "SWEDE" HAMMOND			X
ETHEL HARDING	X		
LES HIRSCH	X		
PETER STORY	X		
ELEANOR VAUGHN	X		
MIKE WALKER	X		

Each day attach to minutes.

ROLL CALL VOTE

SENATE COMMITTEE LOCAL GOVERNMENT

Date 1-20-87 Senate Bill No. 28 Time 1:50 p.m.

NAME	YES	NO
BRUCE CRIPPEN	X	
R. J. PINSONEAULT	X	
TOM BECK	X	
DOROTHY ECK	X	
H. "SWEDE" HAMMOND	X	
ETHEL HARDING	X	
LES HIRSCH	X	
PETER STORY	X	
ELEANOR VAUGHN	X	
MIKE WALKER	X	

Rosemary Jacoby
Secretary

Bruce Crippen
Chairman

Motion: Walker — Do Pass as Amended

1987

January 20, 19 97

MR. PRESIDENT

We, your committee on LOCAL GOVERNMENT

having had under consideration SENATE BILL No. 28

first reading copy (white color)

PROPERTY OWNERS' RESPONSIBILITY/LIABILITY FOR WATER SERVICE PIPELINES

Respectfully report as follows: That SENATE BILL No. 28

BE AMENDED AS FOLLOWS:

1. Title, line 6.
Strike: "CONSTRUCTION AND"
Following: "MAINTENANCE OF"
Strike: "PUBLICLY OR"

2. Page 1, lines 13 and 14.
Following: "costs of"
Strike: "construction and maintenance of publicly or"
Insert: "constructing"

3. Page 1, line 15.
Following: "from"
Insert: "the main to his premises, and for maintaining service pipelines from"

4. Page 1, lines 15 and 16.
Following: "private" on line 15
Strike: "or public"

5. Page 1, line 17.
Strike: "constructing and"

~~AND AS AMENDED~~
~~DO PASS~~

~~DO NOT PASS~~

CONTINUED

Chairman.

6. Page 1, line 18.
Following: "line"
Insert: ", except that the property owner shall pay for pipe and other supplies used in maintaining water service lines between the main and his property line"

7. Page 1, lines 20 and 21.
Following: "excavation in"
Strike: "constructing or"

8. Page 3, line 19.
Following: " constructing"
Insert: "water service pipelines from the main to his premises"

9. Page 3, line 20.
Following: " and"
Insert: "for"

10. Page 3, line 21.
Following: " private"
Strike: "or municipal"

11. Page 3, line 22.
Following: " cost of "
Strike: "constructing and"

12. Page 3, line 24.
Following: " line"
Insert: ", except that the consumer shall pay for pipe and other supplies used in maintaining water service lines between the main and his property line"

AND AS AMENDED
DO PASS

SENATOR BRUCE D. CRIPPEN, Chairman